IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.176 of 2003
BINOD KUMAR CHAURASIA
Son of Baijnath Kumar Chaurasia, Resident of village Japura Tapa, P.S.Chandi District Bhojpur, Presently residing at Devi Asthan Gudari Bazar P.S.Ara Town, District Bhojpur……...Appellant.
Versus
NIRMAL KUMAR CHAURASIA
Son of Baijnath Kumar Chaurasia, Resident of village Japura Tapa, P.S.Chandi District Bhojpur, Presently residing at Devi Asthan Gudari Bazar P.S.Ara Town, District Bhojpu…….Respondent.

For the appellant : Mr.Satish Chandra Mishra,Adv.
Mr.Chandrahas Mishra,Adv.
For the Respondent : Mr. Devendra Kr.Sinha,Sr.Adv.
Mr.Bajrangi Lal, Adv.
Mr.Birendra Kumar, Adv.

17 10.12.2008 This appeal is against the order dated 27th March 2003 of the learned Subordinate Judge-II, Ara passed in Misc. Case No.13 of 1997 whereby under Order XXXIX Rule 2(A) of the Code of Civil Procedure, the appellant/defendant No.4 has been sentenced to undergo civil imprisonment for one month for violating the order dated 22nd April 1007 of Court for maintaining status quo with regard to the suit property under the Title(Partition) Suit No. 349 of 1995.

The plaintiff/respondent had filed Title (Partition) Suit No. 349 of 1995 against the co-sharers defendants, including Defendant No.4/appellant for partition of the joint family property claiming 1/7th share in it. The suit was filed on 29th September 1995.

On 11th March 1997, the plaintiff/respondent filed a petition under order XXXIX Rule (2) C.P.C. praying for restraining the defendant from alienating the suit property. On such prayer of the plaintiff/respondent the trial court vide its order dated 22nd april1997 passed an order to maintain status quo by the parties. Defendant

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No.4/appellant is the younger brother of the plaintiff-respondent. The plaintiff/defendants No.4 had appeared in the said suit on 6th May 1997 and he filed his W.S. on 6th June 1997.

It was on 16th December 1997, the petition under Order XXXIX Rule 2(A) CPC under Misc. Case No.13 of 1997 was filed by the plaintiff/respondent alleging that despite status quo order dated 20th February 1997, the defendant No.4 /appellant fixed one iron gate in his (defendant No.4's/appellant's) residential house, despite protest by the plaintiff/respondent. The defendant No.4/respondent filed his rejoinder in the said Misc. Case No.,13 of 1997 and his defence was that on 2nd July 1996 a private partition was already effected between the plaintiff/respondent and the defendant co-sharer and that documents regarding private partition had also been prepared and the plaintiff and the defendant i.e. co-sharers as well as the Panches had put their signatures on the deed of private partition and thereafter parties were in possession of the property according to that partition. The appellant/defendant No.4 also took the plea that he had no knowledge of status quo order passed by the Court and that he did not violate any such order.

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While deciding the Misc. case by the impugned order, the learned trial court considered the statement of witnesses and the report of Pleader Commissioner Mr.Basuki Nath, Advocate who had reported in his report dated 20th December 1997 that he had found new construction with respect to fixing of the gate. Learned counsel for the appellant submitted that the Pleader commissioner, no doubt, stated about construction of the new gate but he did not mention any specific

date of the construction of the gate. It was also pointed out that the Pleader Commissioner was also not examined by the plaintiff-respondent in the Misc. case. Learned counsel further stated that the order for maintaining status quo was passed on 22nd April 1997 before the appearance of Defendant No.4/appellant who appeared on 6th May 1997 and that there is nothing on record to show that the copy of the said order dated 22nd April 1997 was ever served upon the defendant No.4/appellant. Learned counsel for the appellant submitted that even according to the plaintiff/respondent the suit properties are joint and thus under law the plaintiff and defendant who are co-parcener have every right to enjoy each and every inch of the land. As to the allegation of fixing of the iron gate, the appellant/defendant No.4 took the specific plea that it was done much before 22nd April 1997 on which date the status quo order was passed. It was also submitted that the fixing of the gate was not done with view to change the physical feature/character of land but it was done with respect to safeguarding the persons and property residing and kept there which was a residential house. Learned counsel for the plaintiff/respondent submitted that the defendant had appeared on 6th May 1997 i.e. after 22nd April 1997, the date of passing of the status quo order and, thus, he was in know of the order and that the violation of the order is alleged on 14th December 1997 but it is not being shown specifically that the order dated 22nd April 1997 was particularly served on the defendant No.4/appellant.

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Learned counsel for the appellant/Respondent No.4 also raised a very interesting question that the status quo order was passed

on the plaintiff/respondent's petition dated 11th March 1997 wherein prayer was made for restraining the defendant from alienating the suit land, therefore, learned counsel further submitted that the status quo order should be construed or be kept limited to the prayer on which such order was passed.

The submissions of the learned counsel appear to carry substance and in such view of the matters, it is found that the status quo order as passed on the petition dated 11th March 1997 of the plaintiff/respondent, would be deemed to be confining to the scope of passing restraint over the parties in disposing of the sit property. Learned counsel submitted that even assuming for argument sake that the iron gate was fixed by the appellant/respondent No.4 with the knowledge of status quo order still it will not cause any violation of the order which was passed with respect to restraining the parties from alienating the suit property and under said Misc. case in which the impugned order was passed there was no allegation that the defrendant No.4/appellant had disposed of or alienated any land of the suit property. The learned trial court while passing the impugned order did not consider these aspects of the matter in the light of petition under Order XXXIX Rule 2(A) C.P.C. else such order could not have been passed. In such view of the matters, the impugned order cannot be sustained in law. Hence, the same is set aside and the appeal is **allowed.**

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Jay/ **(C.M.Prasad,J)**